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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO DISTRICT OFFICE Date: DEC 30 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 54-year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and father of a lawful permanent resident. He seeks a waiver of inadmissibility in order to remain in the United States with his family and adjust his status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on his behalf by his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that that the applicant is not inadmissible and that he has established that refusal of his admission will result in extreme hardship to his U.S. citizen spouse. The AAO notes that, although counsel indicated that a more detailed brief would be submitted within 30 days of filing the appeal, as of this date, the record does not contain the brief. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant inadmissible because "[h]e testified, under oath that she [sic] had used his B-2 non-immigrant visitor for pleasure visa to enter the United States on numerous occasions while he had been residing in the United States since 1997. It is also noted that the applicant stated on his adjustment application that he had never procured or attempted to procure a visa, other documentation, entry into the United States, or other immigration benefit by fraud or willful misrepresentation of a material fact. In addition, Form G-325A, Biographical Information (signed under penalty of perjury), indicates that applicant has been working in the United States without permission from February 1997 to December 2001. The applicant was found to be inadmissible under Section 212(a)(6)(c)(i) of the Act for having made a willful misrepresentation of a material fact upon entry to the United States." *Decision of the District Director* (August 18, 2003) at 2.

Counsel counters, "[t]he government assertion that Mr. Hernandez used his tourist visa on 'numerous occasions' is an inaccurate portrayal of the actual facts. The government assertion that Mr. Hernandez's adjustment application does not include that he acknowledged his misrepresentation is a false accusation. The question is clearly marked YES (Part 3, question 10) in regard to misrepresentation." *Notice of Appeal* (September 17, 2003).

The record reflects that the applicant and his wife married in Mexico in 1977. She became a U.S. citizen in 2000. The record contains a copy of the applicant's California driver license and an employment authorization card from the former Immigration and Naturalization Service (INS), both issued in 1989. On the Form G-325A, *Biographic Information,* apparently completed in November 2001, the applicant claims that he has continuously resided and worked in the United States since February 1997. The applicant was issued a combination B-1/B-2 visa and Border Crossing Card in Guadalajara on January 21, 1997. He entered the United States with this visa on or about February 19, 1997 and July 4, 1998. The record reflects that the applicant last entered the United States on August 19, 2001, when he was admitted as a B-2 visitor for pleasure until February 18, 2002. The immediate relative petition filed on December 5, 2001 on his behalf by his wife was approved on August 21, 2002. The district director concluded based on this evidence that the applicant was an intending immigrant at the time of his August 18, 2001 admission and willfully misrepresented his intent by using a visitor visa to enter the United States.

The applicant bears the burden of proof to show that he is not inadmissible. INA § 291, 8 U.S.C. § 1361. The AAO finds that the district director has sufficient evidence to support a finding that the applicant possessed a knowing intent to immigrate to the United States at the time of his 2001 admission. The applicant presented himself as an applicant for admission (and was admitted) for a temporary nonimmigrant stay, which would not have been granted had his immigrant intent been known. The district director's inadmissibility finding is therefore affirmed. The remaining question on appeal is whether the applicant qualifies for a waiver.

Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country

to which the qualifying relative would relocate. *Id.* at 566. The Board of Immigration Appeals (BIA) has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's spouse (Ms. Hernandez) is a 50-year-old naturalized citizen born in Mexico. She and the applicant have been married for 27 years and have two adult children who live in Mexico. Her father is deceased, and her mother, aged 94, lives in Mexico. The applicant's parents are deceased.

[redacted]ndicates in her declaration in support of the waiver application that she would be unable to support herself in the United States without the applicant's income. The record reflects that, in 2001, Ms. [redacted] provided approximately 21% of the household income of approximately $57,000, which she earned by working three different jobs. The remaining 79% of the household income was provided by the applicant's salary as a sales representative for a tortilla manufacturer. [redacted] contends that she will be unable to find work at her age in Mexico. The record contains four pages of undated and unidentified classified advertisements for employment, apparently from a Spanish-language newspaper. The three advertisements translated into English specify the desired age of the employee as between 18 and 40 years old (one advertisement for a receptionist also states "preferably single"). Only three advertisements are translated and constitute a miniscule fraction of the many advertisements reproduced on the four pages. There is no information in the record as to where these advertisements were taken from, nor is there country conditions or other documentation to support the contention that they are representative of the totality of employment opportunities for [redacted] in Mexico. There is also no evidence to address the employability of the applicant in Mexico, and his potential for contributing financially to household expenses in the United States from Mexico [redacted] also states that she has begun training for a career in child care and would be unable to continue in Mexico, since most women care for their own children, and would be unable to continue without the financial support of her husband.

She also asserts that her employability in her current field, nursing, is diminished due to an injury she suffered. The record reflects that [redacted] sprained her right foot in 2000. She was able to return to work the same day, with restrictions. There is no indication that this sprain has caused a chronic or permanent injury affecting her ability to work. She also indicates that she injured her back and undergoes hormone therapy. There is no supporting evidence of such in the record. The AAO also finds that there is insufficient evidence to conclude that the sprain amounts to a significant medical condition bearing on the hardship [redacted] would face if she is refused admission.

[redacted] also expresses concern for her daughters, for whom she indicates her husband pays for private school and a residence. There is no supporting documentation for these contentions, or for the assertion that her daughters, aged 23 and 27, are unable to support themselves.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [redacted] faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") The applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). In

this case, the record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relative rises beyond common difficulties of separation or relocation to the level of extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.